

REMARKS

The Office Action dated February 6, 2008 has been carefully considered. None of the claims are amended, but are presented for convenience. Claims 99 and 100 are allowed. Claims 2 and 41 are objected to.

The Specification is amended to include required information about the ATCC deposit.

Applicant's representative conducted a telephonic interview with Examiner Joiike on March 17, 2008. All the outstanding rejections were discussed and the Examiner clarified what steps are necessary to correct the outstanding issues.

35 U.S.C. § 112

Claims 26, 34 and 35 were rejected under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and or use the invention.

The Examiner stated that the mere reference to a deposit does not necessarily mean that the deposited material is readily available. The deposit made in the present case is readily available at the ATCC without restrictions to the accessibility of the deposits, consistent with 37 C.F.R. 1.808 and steps are being undertaken to convert it to a deposit under the Budapest Treaty (without restriction to the accessibility). Further, the specification is herein amended to contain additional information about the ATCC deposit.

For all the above reasons, it is believed that the claims are in compliance with 35 U.S.C. 112.

35 U.S.C. § 102

Claims 1, 3-36, 39-40, and 42-47 were rejected under 35 USC 102(e) as being anticipated by US 6,720,415.

The applied reference, US 6,720,415, has two inventors who are also co-inventors of the present application and who are the sole inventors of claims 1, 3-36, 39-40 and 42-47. Therefore, US 6,720,415, applied as anticipating certain claims of the present invention, is not the invention "by another" as to those claims. A Declaration provided under 37 CFR 1.132 is submitted herewith in support of this argument.

Applicant respectfully requests that the rejection be withdrawn.

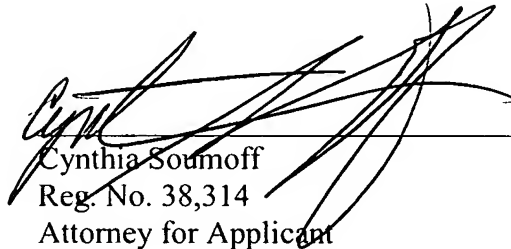
DOUBLE PATENTING

Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,936,435 ('435). A statement concerning a Terminal Disclaimer was made in the Amendment of August 4, 2006.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should he believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

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